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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18605-2013

Date of Decision:- August 01, 2017

Rajesh Tiwari

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Rakesh Verma, Advocate,
for the petitioner.

Mr. Rahul Rathore, DAG, Punjab.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [Cr.P.C.] is for quashing of Complaint No.110 dated 5.5.2011 (Annexure P/1) filed under Sections 7 and 12AA of Essential Commodities Act, 1955 [for short, "the Act"] and the summoning order, dated 9.2.2012, [Annexure P/4] passed by learned Chief Judicial Magistrate, Hoshiarpur

2 Facts relevant for the purpose of decision of this petition; that sample of fertilizer was taken from the shop of Pankaj Kumar, who is proprietor of M/s Handa Khad Store and that sample was found to be not in accordance with the specifications prescribed under the Act. Complaint, Annexure P/1 was filed against the dealer and present petitioner, Rajesh Tiwari who has been arrayed an accused being

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S.R.M. of M/s Indian Potash Limited.

3 Learned counsel for the petitioner contended that the present petition **qua the petitioner** is not maintainable as he is not involved in any offence in his capacity as such. The allegations in the complaint, Annexure P/1, are primarily against the dealer, who was selling and stocking the fertilizer, which was not according to the required specifications and present petitioner has been arrayed in his capacity as SRM of M/s Indian Potash Limited, being manufacturing company. However, the main plea taken by learned counsel for the petitioner is that the complaint [Annexure P/1] has not been filed against the company and in the absence of that, present petition qua the petitioner is legally not maintainable as per provisions of Section 10 of the Act. On this point, reliance was placed upon the two decisions of this Court in **Suresh Kumar Kochhar and another Vs. State of Punjab, 2014(2) R.C.R. (Criminal) 206** and **S.H.Chisty Vs. State of Haryana, 1997(2) R.C.R. (Criminal) 565.**

4. While arguing on this point, learned State counsel contended that the petitioner can challenge the summoning order dated 9.2.2012 (Annexure P/4), so the present petition is not maintainable as all these pleas can be taken by the petitioner before the Court below.

5. Having considered the submissions made by learned counsel for the parties and perusal of record, this Court is of the considered view that the present petition is primarily on legal point, that as per provisions of Section 10 of the Act, the complaint, Annexure P/1 is not maintainable. For this purpose, Section 10 of the Act would also be relevant, which is

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extracted below:-

“10. Offences by companies.--(1) If the person contravening an order made under Section 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purpose of this section, -

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

6. As per above section, the offence committed by the Company in contravention of Section 3 of the Act, every person, who at that time was the incharge of, or was responsible for the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

7. In the Insecticides Act, 1968 (for short, “the 1968 Act”), similar provision as contained in Section 10 of the Act, have also been

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incorporated. For ready reference, Section 33 of the 1968 Act is extracted below :-

“33. Offences by companies. (1) Whenever an offence under this Act has been committed by a company, a person who at the time the offence was committed, was in charge of, or was responsibly to the company for the conduct of the business of, the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proved that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent of connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager Secretary or other office shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purpose of this Section,

a) "company" means any body corporate and includes a firm or other association of individuals; and

b) "director", in relation to a firm, means a partner in the firm.”

8. Provisions of Section 10 of “the Act” make it obligatory that every person in charge of the stock would be legally liable as an accused along with the liability of the company. The words “as well as the company” indicate that the liability of individual shall come only after the liability of the company and these words have lot of significance and it

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cannot be brushed aside. A person responsible for the manufacturing cannot be prosecuted individually, without arraying the company as an accused, which has not been done in the present case as is evident from complaint, Annexure P/1 and as such the prosecution against the present petitioner cannot be allowed to continue. On this point, reliance is being placed upon the decision of this Court in **S.H.Chisty's case [supra]**.

9. It has been held in **Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt. Ltd., 2010 (2) Recent Apex Judgment 562**, that provisions of Section 141 of Negotiable Instruments Act, 1881 as well as Section 10 of the Act that arraying of only a person/Incharge of the company, without arraying the company itself, is not permissible. Such a view was also taken by this Court in **Suresh Kumar Kochhar's case [supra]**. Therefore, the complaint, Annexure P/1, is not maintainable qua the present petitioner.

10. The present petition is, consequently, allowed and the complaint (Annexure P/1) as well as all subsequent proceedings arising therefrom are quashed **qua the present petitioner**.

August 01, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes
Yes